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Paper No. 11

Marc H. Johnson
3670 Yucca Drive
Lake Havasu, AZ 86404

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OFFICE OF PETITIONS

In re Application of :
Marc H. Johnson :
Application No. 10/054,202 :
Filed: May 10, 2002 :
Attorney Docket No. N/A :

ON PETITION

This is a decision on the petitions filed March 16, 2004, under 37 CFR 1.137(a) and 1.137(b), which are being treated as a petition to accord a filing date under 37 CFR 1.53.

The petition to accord a filing date is **GRANTED**.

The application was deposited on January 24, 2002. However, a "Notice of Incomplete Nonprovisional Application" (Notice) was mailed to applicant on March 11, 2002, which set a two-month period within which to submit a reply. A reply was received in the Office on May 10, 2002, and a letter withdrawing the first Notice was mailed to applicant on June 6, 2002. Additionally, a second Notice of Incomplete Nonprovisional Application was mailed to applicant on the same date. Applicant sent in a reply to the second Notice on August 12, 2002, and a Notice of Abandonment was mailed to applicant on May 2, 2004. The Notice of Abandonment provided instructions on revival under 37 CFR 1.137(a) and (b).

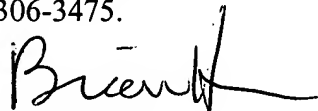
A petition to revive is inappropriate under the circumstances of the present application. The present application was determined to be incomplete by the Office of Initial Patent Examination, which resulted in the Notice being sent to applicant informing him that no filing date had been accorded the application. However, a review of the application file discloses that the reply submitted on May 10, 2002 would entitle the application to a filing date. The requirements for obtaining a filing date for a nonprovisional application for patent are set forth in 35 U.S.C. 111(a). A claim in compliance with 35 U.S.C. 112, second paragraph, is required by 35 U.S.C. 111(a). Therefore, the correct filing date of this application is May 10, 2002, the date of receipt

of a claim in the Office. Since the reply was filed timely, the application was improperly held abandoned. Accordingly, the unavoidable petition fee of \$55 is unnecessary. Petitioner may request a refund of this fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany such a request.

An examination of this application reveals that applicant is unfamiliar with the patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection of the invention disclosed. Applicant is strongly advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The USPTO cannot aid in selecting an attorney or agent.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of **May 10, 2002**, using the oath or declaration filed on January 24, 2002, and the specification, drawings, and claims, filed on May 10, 2002. The papers deposited with the original application and the papers filed March 16, 2004 **will not** be processed or examined.

Telephone inquiries concerning this decision should be directed to Marianne Morgan at (703) 306-3475.



Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Examination Policy